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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FORD, JOHN M

ART UNIT PAPER NUMBER

1624

DATE MAILED: 07/23/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/762892

Applicant(s)

Schindler et al

Examiner

J. M. Ford

Group Art Unit

1624

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on June 10, 2002
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1--8, 10--15 and 17--23 is/are pending in the application.
- Of the above claim(s) 11, 12, 18, 19 and 23 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1--8, 10, 13--15, 17, 20 & 21 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit: 1624

Applicants' response of June 10, 2002, is noted.

The claims in the application are claims 1--8, 10--15 and 17--23.

Claim 1 is rejected under 35 U.S.C. 112, 2nd paragraph. In R1 and R2, in regard to the 5 to 7 membered heterocyclic ring, "contains" is an open term. The expression, therefore, includes any number of unknown further hetero atoms in the unknown 5 to 7 membered ring, 1 or 2 O, N, or S includes heterocyclic rings that are too strained to have thus far been made, such as adjacent O-O; S-S or S-O combinations,

What is the source of the starting materials? 35 U.S.C. 112, 1st paragraph.

Similarly, in N^{R1}₂ of claim 1, "contain" is an open term.

Also, R5 and R6 are "open" for the same reason.

Similarly, heteroaryl is open because of "contains" at the top of page 5 of the most recent amendment.

What is the purpose of the last paragraph of claim 1?

In re Nomiya et al., 184 USPQ 607, provides that it would be proper to reject, as obvious, (35 U.S.C. 103) the remainder of claim 1, in view of such a paragraph.

Claims 2--7 are rejected as being dependent on a rejected claim.

Claim 2 is rejected as a result of the open "contain" in the heterocyclic form of N^{R1}₂ (35 U.S.C. 112, 2nd paragraph).

Art Unit: 1624

A composition with no intended use, reads on all uses intended or not, therefore, unsupportable. Accordingly, claims 10 and 17 are rejected under 35 U.S.C. 112, 2nd and 1st paragraph,

MPEP 806.05(h) provides for restriction when more than one use is set forth, therefore claims 11, 12, 18, 19 and 23 stand withdrawn, 37 CFR 1.475 provides that these claims be restricted to one utility.

Claims 11 and 12 are not acceptable utility expressions, as noted in the previous Office Action.

Claims 8, 13, 14, 20, and 21 are rejected as being dependent on a rejected claim. That is, even if they were written in independent form, they would not be allowable, because of the rejection of claim 1.

Claim 22 and 1 is/are rejected for the reasons claim 1 ^{is/was} rejected. What is the hetero? Where is it supported? 35 U.S.C. 112, 2nd and 1st paragraph. What is the source of the rings claimed?

Why is claim 15 dependent on claim 5? There is no antecedent basis in claim 5 for claim 15. Formula IV and III are not mentioned in claim 5. Claim 5 is not a process claim. Claim 15 is rejected under 35 U.S.C. 112, 4th paragraph, as being ^{an} improper dependent claim.

What is claim 8? The process of reacting a hydroxy compound with an amine. With an specified further "suitable reagent" step. Does that language satisfy 35 U.S.C. 112, 2nd paragraph?

Art Unit: 1624

Should applicants get a patent claim to treating all cardiovascular disorders, regardless of the *causative* action? Hardening of the arteries, congestive *heart failure* and material building up inside the arteries all have different causes. How could one compound treat all cardiovascular disorders? Accordingly, claim 22 is rejected under 35 U.S.C. 112, 2nd and first paragraph. What cardiovascular disorder do applicants have in mind, and where is the adequate representative exemplification for that disorder in the specification?

John M. Ford:jmr

July 18, 2002



JOHN M. FORD
PRIMARY EXAMINER
GROUP - ART UNIT

1624